

Remarks

Claims 21 – 51 remain in the application and claims 22, 34, 40, 41, 48, 49, and 51 have been amended. This transmittal is presented in response to the sixth office action and is believed to completely resolve each issue as raised by the Examiner. Applicant believes the claims as amended to be non-obvious and patentably distinct from all prior art.

OA Item #1: Rejection of claims 22, 34-45, and 47-51 under 35 USC § 112 first paragraph –

Written description:

The examiner contends that applicant's specification as originally filed failed to teach "a container having a non-annular funnel connected to an opening in a wall of the container wherein the funnel axis is defined as running substantially from the center of the opening in the wall to substantially the center of an opening in the funnel located within the container, and wherein a cross-sectional shape of the funnel in a position substantially normal to the funnel axis defines a cross-sectional shape having a first breadth dimension and a second breadth dimension and wherein the first breadth dimension is greater than the second breadth dimension", "a non-edible utensil of the following group of non-edible utensils consisting of, a spoon, a pair of tongs, a straw, and a device for dipping eggs", "a discrete unit of liquid dye concentrate defining a colorant pill having a liquid dye concentrate enclosed within a liquid soluble capsule", "a device for dipping eggs constructed from formed wire and having a handle portion and an open loop portion", or "at least one utensil having a substantially elongated handle portion and an open loop portion". Applicant respectfully traverses the examiner's rejection of claims 22, 34-45, and 47-51 under 35 USC § 112 first paragraph written description requirement and requests that the examiner withdraw the rejection.

With respect to the non-annular cross-section shape, applicant reiterates applicant's explanation as provided in applicant's previous office action response as follows: In order to maximize the spill resistivity of applicant's container, that the anticipated potential gap between the intended work piece and sidewalls of applicant's funnel were minimized. In other words, applicant's funnel was sized and shaped for an egg (i.e. the intended work piece which has a generally elliptical shaped cross-section) to pass through applicant's funnel without excessive gaps or openings through which jostled or splashed

liquid could spill. Accordingly, applicant's funnel forms the shape of an "extruded ellipse". Applicant notes that an ellipse, by definition, includes a first breadth dimension that is greater than a second breadth dimension. Furthermore, the well of applicant's container, forms a well having a corresponding generally elliptical cross-sectional shape. This fact is rendered clear by reference for instance to drawing figure 2. In figure 2, an exploded isometric view of applicant's container, the container is shown as having a generally conical shape. Accordingly and in particular, the upper edge of lid 30 is shown as a circle (refer to the upper edge of lid 30 nearest the arrowhead of feature callout 30). Note that this circular edge is in distinct contrast to the elliptical upper edge of funnel opening 36. Were it not so and funnel 34 were circular in cross-sectional shape rather than elliptical in cross-sectional shape, then the distance between upper opening edge 36 and the upper outer corner of lid 30 would need to be constant regardless of the clocking or angular orientation of where a measurement is taken. But inasmuch as funnel 34 is elliptical in cross-sectional shape, the distance between funnel upper opening 36 and the upper outer edge of lid 30 is the least when measured at an angular orientation in line with tab 31 (because the major diameter of funnel 34 cross-section is in line with tab 31), and the distance between funnel upper opening 36 and the upper outer edge of lid 30 is the greatest when measured at an angular orientation 90 degrees from tab 31 (because the minor diameter of funnel 34 cross-section is 90 degrees from tab 31). It can also be seen in figure 2 (and figure 1) and confirmed in figures 3, 4, and 5, that the edge of funnel lower opening 38 defines an ellipse that is angularly in line with the elliptical edge of funnel upper opening 36, but is of smaller and offset major and minor diameters. Having thus pointed out that the funnel of applicant's container is elliptical in cross-sectional shape, applicant respectfully points out that "elliptical" satisfies the definition of "non-annular".

With respect to the axis of applicant's funnel, the axis is merely a theoretical line that passes through the center of elliptical opening 36 and elliptical opening 38. Thus while the axis exists, it is not shown in the drawing figures. The purpose of including the definition of the axis was to define the orientation of a cross-sectional cut of funnel 34 so as to ensure that the resultant cross-sectional cut was elliptical. For instance, if funnel 34 were to have a cross-sectional cut taken vertically, then the resultant cross-section would not result in an ellipse, but rather it would result in the straight lines

shown nearest the arrowhead of feature callout 34 in figures 3, 4, and 5. Having thus established support for the non-annular cross-section, applicant respectfully requests that the examiner's rejection of claims 47-48 be withdrawn.

With respect to the breadth of the term "non-annular", applicant does not dispute that the term "non-annular" may read on a variety of configurations other than one having an annular or circular cross-section. However, applicant respectfully suggests that the examiner's argument is not supported in law. Applicant respectfully suggests that 35 USC § 112 does not require of an applicant to described every conceivable configuration that an applicant's claim language may cover, rather 35 USC § 112 requires that an applicant described a configuration that supports applicant's claim language. Applying this argument to applicant's application, it is of no concern that applicant's disclosure did not describe a funnel having rectangular cross-section (i.e. a configuration that "non-annular" reads on), as long as applicant's application described at least one "non-annular" configuration (i.e. applicant's funnel of elliptical cross-section) that supports the claim language. Furthermore, applicant respectfully points out that the functional geometric shape of the funnel of several patented containers has been held to be allowable subject matter. See for instance claim 1 of 5,246,046, claims 1 and 10 of 5,495,876, and claims 1 and 10 of RE36,131. More specifically, see claim 36 of recently allowed reissue application 09/867,320 (a reissue of 5,908,057 – the appeal brief and subsequent notice of allowance of which are included with this transmittal) which specifically recites a "non-cylindrical/non-conical funnel".

With respect to the breadth dimensions, the examiner argues that, "the recitation that a first breadth dimension is greater than the second breadth dimension does not limit the shape of the funnel to an ellipse since the first breadth dimension and the second breadth dimension as claimed are not required to pass through the funnel axis and can in fact read on a figure with a circular cross-section since a cord which defines a given breadth dimension that does not pass through the funnel can have different lengths". Applicant respectfully traverses the examiner's argument. The examiner appears to have misapplied the term "breadth dimension". The breadth of an object or a figure is an outer dimension. Webster's dictionary defines breadth as a "distance from side to side" and as "something of full width". Thus if two outer or breadth dimensions of the claimed "normal to the axis" cross-

sectional figure are of dissimilar value, then the configuration may not be circular and must be the claimed “non-annular” configuration, whether or not the configuration is limited elliptical or oval or rectangular, or any other non-annular configuration.

With respect to a non-edible utensil of the following group of non-edible utensils consisting of, a spoon, a pair of tongs, a straw, and a device for dipping eggs, the examiner argues that the applicant has failed to teach or suggest a non-edible utensil. Applicant respectfully traverses the examiner’s argument. While applicant agrees that utensils may on an occasion be comprised of edible matter as those utensils that the examiner has cited, inasmuch as applicant did not described applicant’s utensils as edible, applicant suggests that applicant’s utensils be accorded the plain and ordinary meaning that one having ordinary skill in the art would attribute to such described utensils – i.e. that of non-edibleness. Furthermore, applicant points out that of the group of non-edible utensils, the device for dipping eggs was specifically described by the applicant as “a wire egg dipper” (see “SUMMARY OF THE INVENTION”, para 0004, line 6). Applicant respectfully suggests that a “wire egg dipper” is hardly a utensil that one would consider as “edible”. Lastly, in her rejection, the examiner cites the egg ladle of Law as being a non-edible utensil (see office action page 7, line 12), and yet suggests that Applicant’s wire egg dipper is not a non-edible utensil. Applicant respectfully suggests that inasmuch as applicant’s wire egg dipper and Law’s egg ladle are substantially similar, such inconsistent classification is not proper.

With respect to “a discrete unit of liquid dye concentrate defining a colorant pill having a liquid dye concentrate enclosed within a liquid soluble capsule” applicant has deleted the aforementioned limitation from applicant’s claims.

With respect to “a device for dipping eggs constructed from formed wire and having a handle portion and an open loop portion”, or “at least one utensil having a substantially elongated handle portion and an open loop portion” applicant respectfully suggests the construction and configuration of a standard “wire egg dipper” of so universally well known, that a detailed description of the wire egg dipper was not required. In support of applicant’s assertion of the well known wire egg dipper, applicant refers to the attached exhibit A. Exhibit A displays an Easter egg coloring kit manufactured by Dudley’s. The kit includes a standard wire egg dipper. The standard egg dipper is shown as being

constructed of formed wire and having an elongated handle portion and an open loop portion for facilitating the manipulation of an egg into and out of a container of liquid colorant. Furthermore, a “wire egg dipper” is disclosed and claimed in US patent 6,386,138 to Schramm (see for instance claim 5). Additional evidence of a teaching of an egg handling utensil having “a handle portion and an open loop portion” can be found in US patent 5,074,239 to Law. Law teaches that, “Supported by a pair of hooks 40 on the front of the chambers 14 there is an egg ladle 44 specifically designed to facilitate placement and removal of an egg 20 into and out from a submerged position within a dye chamber 14. The egg ladle 44 includes a stem 46 forming a handle thereof and a head portion 48 having a multi-sided configuration with an aperture therein, specifically sized and dimensioned to hold and support an egg for placement and removal from within the chambers 14.” (see col 3 lines 29 – 38 and fig 1). Thus applicant respectfully suggests that an “egg dipper” having the claimed features was well known in the art and did not require a detailed description.

OA Item #2: Rejection of claims 21-22, 24-28, 30-34, 36-45, and 47-51 under 35 USC § 103(a) – Obviousness:

The Examiner has rejected claims 21-22, 24-28, 30-34, 36-45, and 47-51 under 35 USC § 103(a) as being unpatentable over the combination of Law ‘239 in view of Schramm ‘046, Hunter (GB) 1,428,356, Martindale ‘797, Price ‘678, and Japan 11-227388. Applicant respectfully traverses the Examiner’s rejection on the basis that Applicants’ invention in the appended modified claims is substantially different than the cited prior art patents. Applicant notes that while Schramm ‘046, Hunter (GB) 1,428,356, Martindale ‘797, Price ‘678, and Japan 11-227388 are directed toward spill resistant containers, Law ‘239 is directed towards a conventional egg crate type egg coloring container. While Law ‘239 does recognize spilling as a problem, Law ‘239 attempts to solve the spilling problem by providing an egg crate structure having multiple egg containing compartments that eliminate the need to move separate bowls to “create work room”. This in spite of art such as Hunter (GB) 1,428,356 and Price ‘678 being available to Law. Law’s solution is of course inadequate as it only minimally reduces spills and leaves the egg crate type container extremely susceptible to spilling when tipped. Law ‘239 does not provide for an egg container that includes a funnel or that prevents spillage

regardless of the orientation of the container. Applicant respectfully suggests that there is no obvious motivation to combine the cited references. On the contrary, Applicant's current invention and the cited prior art are far removed. The invention of a container that provides ready access to a removable egg and yet provides for the resistance to spillage of liquid contents of the container when the container is oriented in any position is distinctly nonobvious. Applicant respectfully suggests that having a funnel member of a size and shape that will allow for the passage of an egg is counterintuitive. Applicant points to the previously cited allowance of 09/867,320 as substantiation of a container having a "non-cylindrical/non-conical funnel" as being patentable. It is the combination of applicant's funnel, funnel geometry, container geometry, container contents, and container spill resistance regardless of container orientation that combine to provide the claimed function and thus contribute to patentability of applicant's invention. Based on the novel and nonobvious nature of applicant's invention, applicant respectfully requests that the rejection be withdrawn.

OA Item #3: Rejection of claims 23, 29, and 35 under 35 USC § 103(a) – Obviousness:

The Examiner has rejected claims 23, 29, and 35 under 35 USC § 103(a) as being unpatentable over the combination of Law '239 in view of Schramm '046, Hunter (GB) 1,428,356, Price '678, Martindale '797, and Japan 11-227388 in further view of Lintvedt '294. Inasmuch as claims 23, 29, and 35 depend from independent claims that are believed to be novel and nonobvious, and inasmuch as claims 23, 29, and 35 inherently include all the limitations of the independent claims from which they depend, applicant respectfully requests that the rejection be withdrawn.

OA Item #4: Rejection of claims 47 and 48 under 35 USC § 103(a) – Obviousness:

The Examiner has rejected claims 47 and 48 under 35 USC § 103(a) as being unpatentable over the combination of Law '239 in view of Schramm '046, Hunter (GB) 1,428,356, Price '678, Martindale '797, and Japan 11-227388 and if necessary, McShane '687. Applicant respectfully traverses the examiner's rejection. As detailed earlier in this office action response, a container having a "non-cylindrical/non-conical funnel" (i.e. a non-annular funnel) has been held to be allowable by

virtue of at least the allowance of the 09/867,320 application (see included references). Accordingly, applicant respectfully requests that the rejection be withdrawn.

OA Item #5: Rejection of claims 34, 36, 38, 39 and 47-49 under 35 USC § 102(b) – Anticipation:

The Examiner has rejected claims 34, 36, 38, 39 and 47-49 under 35 USC § 102(b) as being anticipated by Price 3,840,678. With respect to claim 34, applicant has added the additional limitation of “non-fluid edible matter removably contained within said container”. Accordingly, applicant believes claim 34 as amended and all claims depending therefrom define over and are not anticipated by Price ‘678. With respect to claim 47, applicant respectfully traverses the examiners argument that Price ‘678 anticipates claim 47. Claim 47 includes the limitation “non-annular funnel”. It is the “non-annular funnel” that provides for a greater container volumetric utilization. Price ‘678 teaches and claims a conical funnel (see col 2, line 2 and fig 2). A conical funnel, being a subset of an annular funnel, thus does not teach, disclose, or anticipate applicant’s “non-annular” funnel. With respect to claim 49, applicant has added the additional limitation of “wherein said edible article and said non-edible utensil define two discreet unconnected objects such that said non-edible utensil is operable to manipulate said edible article”. Applicant respectfully points out that Price ‘678 merely discloses a singular utensil that is inserted and withdrawn from a container, whereas applicants’ invention discloses a non-edible utensil that is separate from and used in combination with an edible article. Accordingly, applicant believes claim 49 as amended defines over and is not anticipated by Price ‘678. Inasmuch as claims 34 and 49 have been amended to define over Price ‘678 and inasmuch as claim 47 is not anticipated by Price ‘678, applicant respectfully requests that the rejection be withdrawn.

OA Item #6: Rejection of claim 35 under 35 USC § 103(a) – Obviousness:

The Examiner has rejected claim 35 under 35 USC § 103(a) as being unpatentable over Price ‘678 in view of Lintvedt ‘294. Inasmuch as claim 35 depends from independent claim 34 which applicant believes to be novel and nonobvious, and inasmuch as claim 35 inherently includes all the limitations of independent claim 34 from which claim 35 depends, applicant respectfully requests that the rejection be withdrawn.

OA Item #7: Rejection of claim 35 under 35 USC § 103(a) – Obviousness:

The Examiner has rejected claim 35 under 35 USC § 103(a) as being unpatentable over Price ‘678 in view of Schramm ‘046. Inasmuch as claim 35 depends from independent claim 34 which applicant believes to be novel and nonobvious, and inasmuch as claim 35 inherently includes all the limitations of independent claim 34 from which claim 35 depends, applicant respectfully requests that the rejection be withdrawn.

OA Item #8: Rejection of claims 40-42 and 44-45 under 35 USC § 102(b) – Anticipation:

The Examiner has rejected claims 40-42 and 44-45 under 35 USC § 102(b) as being anticipated by McCombs 1,254,714. With respect to claim 40, applicant has amended the claim to delete the limitation of “a discrete unit of liquid dye concentrate”. Applicant believes claim 40 as amended and all claims depending therefrom define over and are not anticipated by McCombs. Accordingly, applicant respectfully requests that the rejection be withdrawn.

OA Item #9: Rejection of claim 43 under 35 USC § 103(a) – Obviousness:

The Examiner has rejected claim 43 under 35 USC § 103(a) as being unpatentable over McCombs ‘714 in view of Schramm ‘046. Inasmuch as claim 43 depends from independent claim 40 which applicant believes to be novel and nonobvious, and inasmuch as claim 43 inherently includes all the limitations of independent claim 40 from which claim 43 depends, applicant respectfully requests that the rejection be withdrawn.

OA Item #10: Rejection of claims 40 and 43-45 under 35 USC § 102(e) – Anticipation:

The Examiner has rejected claims 40 and 43-45 under 35 USC § 102(e) as being anticipated by Martindale 5,758,797 and argues that Martindale ‘797 teaches every element of the claimed kit as set forth in claim 40. The examiner makes this assertion in part due to the limitation of “wherein said colorant defines a predetermined quantity of colorant powder in the container”. Applicant respectfully points out that applicant’s claim 40 does not include such limitation. Applicant further notes that such

limitation was deleted from claim 40 in applicant's previous office action response. Accordingly, applicant respectfully requests that the rejection be withdrawn.

OA Item #11: Rejection of claim 42 under 35 USC § 103(a) – Obviousness:

The Examiner has rejected claim 42 under 35 USC § 103(a) as being unpatentable over Martindale '797. Inasmuch as claim 42 depends from independent claim 40 which applicant believes to be novel and nonobvious, and inasmuch as claim 42 inherently includes all the limitations of independent claim 40 from which claim 42 depends, applicant respectfully requests that the rejection be withdrawn.

OA Item #12: Rejection of claim 41 under 35 USC § 103(a) – Obviousness:

The Examiner has rejected claim 41 under 35 USC § 103(a) as being unpatentable over Martindale '797 in view of Lintvedt '294. Applicant points out that claim 41 has been amended. Applicant believes claim 41 as amended to nonobvious over Martindale '797 in view of Lintvedt '294. Accordingly, applicant respectfully requests that the rejection be withdrawn.

Conclusion:

Applicant notes that any amendments made by this paper which are not specifically discussed herein are made solely for the purpose of more clearly and particularly pointing out and claiming Applicant's invention.

Applicant specifically reserves the right to prosecute claims of broader and differing scope than those presented herein in a continuation application.

Applicant submits that the amendments and the arguments presented herein have placed the claims in condition for allowance. Action in accordance therewith is earnestly solicited.

If the Examiner has any questions or comments which may be resolved over the telephone, she is requested to call Michael R. Schramm at 801-625-9268 or at 801-710-7793.

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Respectfully submitted,



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